

SELECTMEN'S MEETING MINUTES

June 28, 2011

Members Present: Larry Harrington, Chairman
James J. DeVellis, Vice Chairman
Mark Sullivan, Clerk
Lorraine Brue
Lynda Walsh

Others Present: Kevin Paicos, Town Manager
Randy Scollins, Finance Director
Senator James Timilty
Attorney Paul DeRensis and Attorney Richard Hucksam
Sue Thibedeau, Animal Control Officer
Paul Johnston, 15 Pine Acres
Witnesses – Anthony Millany, Johnathan Rice, C.J.
Curapacis, Jackie Napoli, Robert Wall, Shara Colantuoni,
Pat Donlan, Maryellen Morrison, Victoria Johnston.

The meeting was brought to order at 7:00 by Larry Harrington, Chairman.

7:00 – Discussion on Public Drinking By-Law – Larry Harrington said Citizens Input, usually heard at the opening of the meeting would be held later. He asked Town Counsel, Attorney Paul DeRensis to give an overview of the Public Drinking By-Law and how it failed at the State level. Attorney DeRensis explained that the procedure from the Attorney General's Office has been to allow an opportunity to present a brief in favor of a By-Law where there are questions; that was not done in this case. He said if that had happened it would have been discovered that AG's Office was working from the wrong By-Law. He gave a brief explanation of how an amended by-law in effect creates a new authority and modifies the old law. He would like to have had the opportunity to present. He pointed out that Mansfield has a similar by-law and has scheduled a brief in August and to present in September. Larry Harrington asked if the Town would be allowed to pursue this at the same time as Mansfield, treating them together and after considering the information, make a decision. Attorney DeRensis said that the use of the wrong by-law was not realized until today. He is going to add that as another reason to give Foxborough the opportunity to present.

Larry Harrington asked how this would be charged under the arrangement with the Town, would there be separate billing leading up to the by-law presentation over the next two or three months. Attorney DeRensis said it would all be under the retainer fee with no additional billing.

Attorney Hucksam said there have been a number of phone calls and letters to the Attorney General's office trying to convince them that the law is legal. He explained that there appears to be disapproval of a similar by-law for Amherst, MA that has the definition of public intoxication as a criminal offense. The Foxborough by-law is a non-criminal ticketing by-law. He explained that any action taken to appeal the Attorney General's decision has to be filed in Superior Court within sixty days after the date of the letter from the Attorney General's office. He also explained that the Town could file for Home Rule petition which requires special legislation to enact the by-law. His recommendation is to continue communication with the AG's office for the next few weeks or a combination of both. Attorney DeRensis said he would come back to the Board with more information.

7:15 – Public Hearing – Dog Restraint or Euthanization - Mark Sullivan, Clerk, read the Public Hearing Notice. The purpose of this Public Hearing is to consider the restraint or disposal of a Rottweiler from the Town of Foxborough. Sue Thibedeau, Animal Control Officer, Paul Johnston, owner of the dog, Morgan, and all testifying witnesses were sworn in by Attorney DeRensis. A copy of the report from the Animal Control Officer was given to Paul Johnston.

Paul Johnston said he had not seen the report prior to this hearing. He said the dog has never been dangerous but he understands that the dog has to be completely restrained. He described the incidents where the children were bitten. Pictures of the children and the dog were distributed. Mark Sullivan asked if Mr. Johnston realized that this is a very serious offense and asked if he wanted to have legal counsel present. Mr. Johnston declined to have legal counsel present saying he would prefer to hear "all the issues".

Sue Thibedeau read from her Dog Bite Report. Attorney DeRensis asked to have that report marked Exhibit 1. Pictures and the Police report were distributed and marked Exhibit 2. Sue Thibedeau said the dog had bitten two times and she felt the dog is a threat to public safety. Her recommendation is to euthanize the dog or place it in an animal sanctuary at the owner's expense. Paul Johnston said he has had the dog for four years and he does not know why suddenly the dog is behaving in such a manner. He said he is reluctant to put down a perfectly healthy dog. He said it has never been a priority to keep the dog in the home because there had never been an issue. He said it was not the child's fault. The dog would be completely restrained by a 4 foot high fence and the dog would not be able to get out.

Attorney DeRensis, referring to the Dog Bite Report, asked if he remembered saying that the dog was hard to control. The answer by Mr. Johnston was "No". Attorney DeRensis asked if Mr. Johnston remembered saying that the dog, Morgan, was harder to control than other dogs he had owned. The answer by Mr. Johnston was "No". Attorney DeRensis then asked if he (Mr. Johnston) recalled telling the Dog Officer that the dog was difficult to

control. The comment by Mr. Johnston was that the dog is a "big dog". When asked if he could control the dog, Mr. Johnston said "yes". He explained that when the child was bitten, he had asked the child to stay away from the dog three times. He said the child suddenly bent down to the dog. Mr. Johnston said he felt putting up the 4-foot fence would deter the dog from getting out. Sue Thibedeau said she had issued an interim restraining order after the first bite and a second interim order after the second bite. She explained the number of days of restraint required. She pointed out that this hearing is a result of the second time the dog has bitten somebody. She said that after the first time the owner should be making every effort to prevent giving the dog another opportunity to bite. The owner was asked why he would take the dog out, even though leashed, on Halloween when there are so many children about. His response was that he had never had a problem before.

Several neighbors and friends testified as to the nature of the dog. Jonathan Rice, age 14, 32 Pine Acre Rd., said he had witnessed the dog Morgan "going after a little child". On Halloween night he recalled hearing that the dog did not like masks and so he pushed his mask up off of his face and leaned down said "Hi Buddy". He said the dog jumped up, put his paws on his shoulders and bit him. He said Mr. Johnston never told him to back away. He said another time he heard his friend Anthony screaming about a dog; he ran to help and Anthony came away with four or five "bumps and cuts". Mr. Robert Wall, 19 Pine Acres Rd. testified that Morgan is a fine dog with a fine owner; that Morgan is very good with smaller dogs. He pointed out that Halloween created an extreme situation. He agreed that it was Mr. Johnston's choice not to leave the dog at home on Halloween night and that was not a good judgment call. He said Morgan was just protecting his family. Jackie Napoli, 40 Pine Acres Rd., said the dog barks aggressively every time she or her son walk by the house and is often "hanging" out the window. Sheryl Colantoni spoke about the fact that Morgan bit a little child and there are many little children in the neighborhood. She has a ten-month old child; and to have this dog in the neighborhood is not okay.

Attorney DeRensis asked Sue Thibedeau if Mr. Johnston had made the statement that he did not trust the dog and didn't want to lose his house and that in comparing Morgan to other dogs he had owned that he stated he is unable to control her like the ones he's gotten as puppies. Sue Thibedeau said the report was from notes made following a meeting with Mr. Johnston. Her response was "yes". Attorney DeRensis then asked that having heard testimony of Mr. Johnston would she still testify that Mr. Johnston made those statements. Her response was "yes". Attorney DeRensis spoke to the Board saying that they have a responsibility under the law of the Commonwealth and local by-laws to provide for public safety and have to consider public safety for children as among the group least able to protect themselves. Two children on separate instances have been bitten. In deliberations one needs to earn the safety of future children being exposed to the animal. The Animal Control Officer will be available to

testify in a court of law. He said he would encourage the Board to at least to recommend and give deference to her recommendation.

A brief discussion ensued regarding responsibility of the owner in restraining the dog as well as his responsibility as a citizen in his neighborhood. Mr. Johnston explained how this has changed his life, that he cannot take his dog out on a leash, his efforts to prevent the dog from barking and how he has cared for other dogs.

Motion by Lorraine Brue to close the Public Hearing. Seconded by Lynda Walsh. **Vote: 5-0-0**

Larry Harrington pointed out that these types of issues are always difficult. Often the dogs are not totally to blame and have to suffer because of neglect of the owner.

Motion by Mark Sullivan that as a stipulation of fact the Board has found that the dog, Morgan, has bitten two children. Seconded by Jim DeVellis.

Vote: 5-0-0

Motion by Lorraine Brue that as a stipulation of fact the Board has found that the dog, Morgan, to be of dangerous disposition. Seconded by Mark Sullivan. **Vote: 5-0-0**

Motion by Jim Devellis that as a stipulation of fact the dog, Morgan, owned by Paul Johnston for three or four years, has bitten two children and based on testimony, both times while off of the property of the owner. Seconded by Mark Sullivan. **Vote: 5-0-0**

Motion by Mark Sullivan that the dog, Morgan, be euthanized based on facts heard at this public hearing. Seconded by Lorraine Brue.

Larry Harrington suggested an addition to the provisions to allow the owner to find a "no-kill" out of town licensed shelter. Kevin Paicos said it is the responsibility of the owner to do research, identify and pay all expenses of getting the dog to a no kill animal shelter; the financial burden of such a move is not the responsibility of the Animal Control Officer.

Mark Sullivan withdrew his motion. Lorraine Brue withdrew the second of the motion.

Motion by Mark Sullivan that the dog, Morgan, is to be removed from Paul Johnston's home immediately following this proceeding. It is the responsibility of the owner to find a no kill animal shelter at the owner's expense within ten days of this public hearing. At the end of such period if no facility has been found, the

dog is to be humanely euthanized under the direction of the Animal Control Officer. Seconded by Jim DeVellis. **Vote: 5-0-0**

Public Drinking By-Law – A brief further discussion was held on this By-Law. It was pointed out that the Mansfield By-Law is the same as the Foxborough By-Law that was voted upon at Town Meeting. Jim DeVellis asked for a review of the process – he asked if the normal practice is to contact the Town if there are questions about the By-Law. He asked if there were any discussions with the State on this By-Law Article prior to Town Meeting. Attorney DeRensis said the AG's office was relying on a 40 year old by-law. He pointed out that this is a new generation with whole different attitudes. He said Foxborough has been a leader on this to re-examine old concepts and that people have to be more accountable. This is a way for towns to address the issue and gives more control over alcoholism and its effect on the community. He said this is a way to make progress and towns have to change legislation to give the towns better tools to address this issue.

7:40 – Employee Health Insurance Legislation – Senator James Timilty – Kevin Paicos explained that it is extremely difficult to make changes in the employee health insurance plans. This legislation gives cities and towns the right, within certain limits, to make changes within health insurance plan design. The bill from the Senate is largely the same as the House bill except for two provisions – instead of 20% co-pay savings for employees, it was changed to 30% and a change in retiree contribution to health insurance. Kevin Paicos pointed out that change from 50/50 to 70/30 contribution for retirees would be disastrous for the Town. He said that would cost the Town \$359,000 per year. He also pointed out that this would add millions of dollars to the all ready \$62M unfunded healthcare liability. Kevin Paicos said this should never come out of conference committee. Senator Timilty said this change in retiree contributions was made basically to honor old contracts. Larry Harrington pointed out that the Town of Foxborough voted years ago for a 50/50 retiree contribution. He said this State change would result in a layoff of some Town employees. Larry Harrington said that what the State has done in this matter is that it has just over ridden what the Town of Foxborough has voted for. He asked Senator Timilty to meet regularly with the Town and keep the Town updated on what is going on at the State level. Kevin Paicos said he is mystified with the Senate's action on this bill. He said this affects not only Foxborough but other Towns in the Commonwealth that are having difficulty in this economy. Senator Timilty said eight out of ten towns have had no comment with this and that thirty nine other senators might not be concerned about how this impacts Foxborough. He said he would be willing to meet more frequently with the Board.

8:00 – Discussion on Quarterly Tax Billing – Randy Scollins and Lisa Sinkus were present to discuss the move to quarterly tax billing. Randy said the billing had gone out. He pointed out that there are two bills the first quarter to be paid by August 1st and the second is due November 1st. This is a preliminary bill

because the tax numbers have not been certified at this time. Payments for third and fourth quarters are due February 1st and April 1st. Lisa Sinkus said it will be a big change for many people. She explained that in this way the Town can capture new growth for budgetary purposes. It will be easier to break down the taxes into four payments. People will still be able to apply for abatement when needed; that could happen after the last two quarters are paid. Dick Heydecker questioned what interest would be charged if a person was a day late paying the taxes.

8:05 – Discussion on date for ATM – Larry Harrington said he wanted to discuss the process for preparing the budget. It was pointed out that the Advisory Committee felt really rushed during this past year with a Special Town Meeting in March followed by the ATM in May. Members of the Advisory Committee felt there was not enough time to thoroughly vet the Warrant articles. Lorraine Brue noted that a number of towns hold their town meetings on Saturday and that would accommodate senior citizens who do not drive at night. Lynda Walsh said it would be a great idea to change the day; it would take a change in the by-law and a simple majority vote at Town Meeting. After a brief discussion, it was determined to try to get the word out to the public, have more dialog on the subject and then decide whether or not to put it on the Warrant for STM. Dick Heydecker pointed out that if the Town Meeting were to be moved to a Saturday some thought needs to be given as to location; it could turn out to be costly to find an appropriate place.

8:15 – Discussion on Town Council Policy – Kevin Paicos distributed final copies of the Selectmen's Policy on Use of Town Counsel. This was an item that was given to the Board of Selectmen to review for comment or approval at this meeting. A brief discussion was held.

Motion by Lynda Walsh to adopt the "Selectmen's Policy on Use of Town Counsel" as submitted by the Town Manager. Seconded by Lorraine Brue.

Vote: 5-0-0

8:25 – Update on Hiring – HR Director and DPW Director – Kevin Paicos reported that the advertisement had gone out to the *Beacon* and *Public Works Assoc. News Letter*. He explained that he would use a different process for hiring for these two positions. He will choose two separate screening committees for both positions. He pointed out that there are a lot of people who are interested in who gets hired. The committees will consist of 6 to 9 people and will select 7 to 12 candidates. The second screening committee will determine the final candidates. He said this should open up the opportunity to a lot of people. It is a process he has used over the years and he feels works very well. In this way everybody has a stake in who is hired. The BOS has the authority to reject a candidate. Kevin Paicos pointed out that the deadline is August for applicants and he would hope to have two people hired by around Labor Day.

A brief discussion was held regarding who would be on the screening committees. Kevin Paicos said he would try to have as broad a group as possible. Larry Harrington agreed that this is a good plan and he commended Kevin for using this process. Jim DeVellis asked if there is provision for someone within the department who might want to be a candidate. Kevin pointed out that only finalists would be made public all other candidates will be confidential.

8:30 – Discussion on Town Report – Larry Harrington said he would like to set up a small committee of Lorraine Brue and Dick Heydecker to go through the Town Report and come back to the Board with recommendations on what they feel needs to be changed. He would like this to be no more than six people.

ACTION:

Minutes: The Minutes for the Board of Selectmen's meetings of May 31, 2011 and June 14, 2011 were reviewed.

Motion by Lynda Walsh to approve the Minutes for the Meeting of May 31, 2011 as amended. Seconded by Jim DeVellis. **Vote: 5-0-0**

Motion by Lynda Walsh to approve the Minutes for the Meeting of June 14, 2011 as amended. Seconded by Lorraine Brue. **Vote: 5-0-0**

Legal Invoices – Town Counsel – Received from Deutsch/Williams an invoice in the amount of \$6,966.11 for services rendered in May, 2011.

Motion by Lynda Walsh to approve the payment of \$6,966.11 to Deutsch/Williams for legal services rendered for the Month of May, 2011. Seconded by Lorraine Brue. **Vote: 5-0-0**

Received from Deutsch/Williams an invoice in the amount of \$4,083.33 for Retainer Services for the month of June, 2011.

Motion by Lynda Walsh to approve the invoice in the amount of \$4,083.33 for Retainer Services for the month of June 2011. Seconded by Lorraine Brue. **Vote: 5-0-0**

Received from Deutsch/Williams an invoice in the amount of \$823.65 for legal services rendered in June, 2011.

Motion by Lynda Walsh to approve the invoice in the amount of \$823.65 for legal services rendered in June, 2011 as submitted by Deutsch/Williams. Seconded by Lorraine Brue. **Vote: 5-0-0**

Donation to Veterans Gift Fund – Received notice from John K. and Susan S. Shortsleeve a donation in the amount of \$500.00 to be deposited in the Veterans Gift Fund.

Motion by Mark Sullivan to accept with gratitude the donation of \$500.00 from John & Susan Shortsleeve to be deposited in the Veterans Gift Fund. Seconded by Lynda Walsh. **Vote: 5-0-0**

Cow Chip Bingo – Received from Sue Thibedeau, Animal Control Officer, a check in the amount of \$1,035.00 from Founders Day fundraiser to be deposited in the Animal Control Gift Fund.

Motion by Mark Sullivan to accept with gratitude the check in the amount of \$1,035 from the Cow Chip Bingo fundraiser on Founders Day to be deposited in the Animal Control Gift Fund. Seconded by Lynda Walsh. **Vote: 5-0-0**

Block Party Request – Received from Rose Lincoln, 12 Howard Avenue, a request on behalf of the Powder House Neighborhood to close Howard Avenue to motorists for the 14th Annual Powder House Neighborhood Block Party on Sunday, August 7, 2011.

Motion by Jim DeVellis to approve the request for the 14th Annual Powder House Neighborhood Block Party as requested in the letter dated 6/7/2011. Seconded by Lorraine Brue. **Vote: 5-0-0**

Committee Appointment – Received a request from Joan F. Sozio, 25 Eastman Avenue to be appointed to the Canoe River Aquifer Advisory Committee, term expiring 7/1/2014.

Motion by Mark Sullivan to appoint Joan F. Sozio to the Canoe River Aquifer Advisory Committee as requested. Seconded by Lorraine Brue. **Vote: 5-0-0**

Audit Committee Appointments – Motion by Mark Sullivan to renew membership on the Audit Committee for William G. Fox and William R. Scollins, III as requested for three year terms. Seconded by Jim DeVellis **Vote: 5-0-0**

Motion by Mark Sullivan to appoint Kevin Paicos, Town Manager, to the Audit Committee for a three year term and to remove the name of Andrew A. Gala, Jr. with thanks for his service on the Committee while in office as Town Manager. Seconded by Lorraine Brue **Vote: 5-0-0**

Motion by Lynda Walsh to appoint Debra L. Spinelli, School Superintendent, to the Audit Committee for a three year term and to remove the name of Christopher Martes with gratitude of his service on the Committee while Superintendent of Schools. Seconded by Lorraine Brue. **Vote: 5-0-0**

8:45 – Citizens Input – Dick Heydecker said that of the questions he has raised he has received zero information even after stopping by Town Hall. He decided to write a letter going through everything. He will give the Chairman the list. He said basically these things pertain to the 3% increase vs. 0 + 1%. Larry Harrington reminded Dick that the Board had voted on that last week.

A brief discussion was held. Larry Harrington explained that when the Board negotiated the new contract there was a raise in the first year and zero for the second. He pointed out that he should have done a better job explaining. This was voted on by the BOS and Town Meeting. Dick asked what had happened to the 1% for the DPW. Has the contract been written to extend into the following FY year? Larry explained that the union had agreed to a split increase and was written into the contract. Dick Heydecker said he feels it is very important information for the taxpayer. Dick pointed out that either party may request to open the contract and he asked who requested a meeting the Town or the Police. Larry Harrington pointed out that the Town Manager approved and the union approved. The Town Manager is responsible for doing these negotiations. Kevin Paicos pointed out that the union does not require the Board to vote on the contract. As to Executive Session Minutes they are not released at this time.

Jim DeVellis reported that he had attended a meeting last Thursday between the DEP and people from Neponset Reservoir Committee, representatives from the BOS, Conservation and the BOH. He explained that this has been a process of various phases of cleanup of the Reservoir. He pointed out that people are now using the reservoir for boating and fishing. He said with the increased boating heavy metals from the sediment are being stirred up. He said Phase 3 is to see what can be done about cleaning up the heavy metal contamination. The Invensys consultant's opinion is that any further cleanup is too expensive and nothing can be done. He said the DEP gave a lot of credit to the volunteer groups that have done so much and it looks like this is not going in the direction of doing nothing. He said this is good news for the Town and hopefully the Town will support all these efforts.

Motion by Lynda Walsh to adjourn. Seconded by Lorraine Brue.

Vote: 5-0-0

Meeting adjourned at 10:15 p.m.

Mark Sullivan, Clerk